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# **SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1950.**

**No. 330.**

**AMALGAMATED ASSOCIATION OF STREET, ELECTRIC  
RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA,  
DIVISION 998, GEORGE KOECHEL and CHARLES BREHM,  
Individually and in Their Representative Capacity,  
Petitioners,**

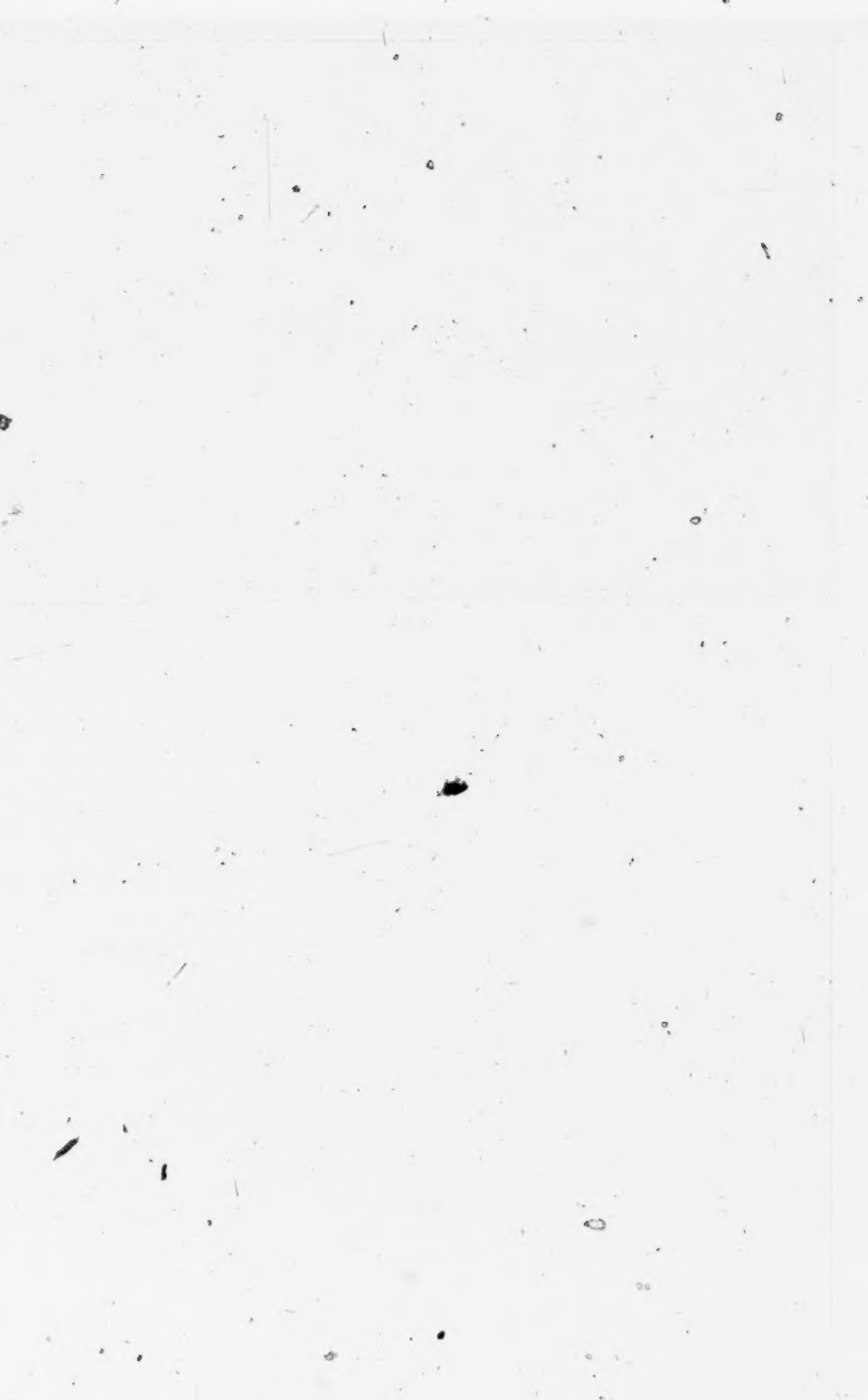
**vs.**

**WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E.  
GOODING, HENRY RULE and J. E. FITZGIBBON, Individu-  
ally and as Members of the Wisconsin Employment Relations  
Board; CARL LUDWIG, H. HERMAN RAUCH and MARTIN  
KLOTSCHE, Individually and as Members of a Board of  
Arbitration, and THE MILWAUKEE ELECTRIC RAILWAY &  
TRANSPORT COMPANY, a Wisconsin Corporation,  
Respondents.**

## **PETITIONERS' REPLY TO RESPONDENTS' BRIEFS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.**

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## **PETITIONERS' REPLY TO RESPONDENTS' BRIEFS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.**

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Petitioners limit this reply to the only question raised in respondents' briefs which was not covered in the Petition for Writ of Certiorari. That question is raised in the brief of respondent The Milwaukee Electric Railway & Transport Company by way of argument (and supporting affidavit) that the principal issues presented by the petition are now moot by virtue of the fact that the arbitration

award expired by force of statute on April 11th, 1950, and that just prior to such time a new collective bargaining agreement had been entered into which does not expire until September, 1951. The respondent State does not rely upon the making of a new agreement, but only upon the termination of the award by operation of statute.

I.

**The Wisconsin Supreme Court Rejected the Argument  
That the Cause Was Moot.**

At the outset it should be noted that the respondent company made a similar argument to the Wisconsin Supreme Court at the time of the original presentation of this matter to that court. It was then urged in respondent employer's brief, and oral argument submitted to the court a week before the termination date of the award, that in view of the imminent expiration of the award the matter was moot and, therefore, should not be determined. In response to this argument petitioners filed a reply brief opposing dismissal on that ground. The Wisconsin Supreme Court decided the case on its merits on May 2nd, 1950, almost one month after the statutory expiration of the award and after the signing of the new contract, thereby rejecting the argument that the matter was moot. Although the opinion of the court is silent on the matter, it can be fairly assumed that the court followed its own prior decisions that it would not declare a case moot where substantial public questions were involved. **Doering v. Swoboda**, 253 N. W. 657; **State v. Kohler**, 232 N. W. 842; **School District v. Cliffcorn**, 112 N. W. 1099.

The respondent State did not raise the question of mootness before the Wisconsin Supreme Court, and raises it now for the first time.



II.

**The Nature of the Law and the Decision of the Wisconsin Court in a Prior Declaratory Relief Proceeding Make It Necessary That the Instant Case Be Decided Under the Present Circumstances.**

In considering the question of whether a Writ of Certiorari should issue, the following sequence of events is pertinent:

The law became effective in 1947. Shortly thereafter the petitioners and another labor organization filed actions for declaratory relief to have the law declared unconstitutional. These cases came before the Wisconsin Supreme Court and that court by its decision on the 12th day of July, 1949, in the case of **United Gas Coke and Chemical Workers v. Wisconsin Employment Relations Board**, 255 Wis. 154, 38 N. W. (2) 692, held that it would not decide the federal questions in the absence of concrete application of the statute. Petitioners, therefore, were unable to get the benefit of a declaratory judgment which would clearly set forth their rights and responsibilities under the law.

While the declaratory relief proceedings were pending, the events occurred which resulted in the instant proceedings, and petitioners were required to go through the expensive and time-consuming process of compulsory arbitration so that they could receive a final determination on the merits with respect to the various challenges which they had made to the law.

In view of the previous decision of the Wisconsin Supreme Court in **United Gas, Coke and Chemical Workers** case, supra, it is apparent that the only way in which petitioners can get a final adjudication by this court is in the instant proceedings, since, under the statute, awards

of the Board of Arbitration expire after one year, and it is a practical impossibility to get the matter through the Circuit Court and Supreme Court of the state and then before this Honorable Court for final determination prior to the expiration of such year.

Thus, if the matter is held moot because of the expiration of one year or because of the entering into of another contract, pending a determination by this Court, then neither petitioners nor any other employees or union so circumstanced will have any opportunity of getting a final determination as to their rights.

In the instant case petitioners were confronted with the practical situation of the existence of a permanent injunction restraining them from striking in support of any further collective bargaining demands made either during or after the effective period of the award, a statute prohibiting such strike and requiring them to submit to compulsory arbitration, and the holding of the Wisconsin Supreme Court that the anti-strike and compulsory arbitration provisions of the law were valid and constitutional. Under those circumstances petitioners had no choice but to make the best contract that conceivably could be made pending the final determination of this court with respect to the validity of the law under which the arbitration proceedings were conducted and the permanent injunction issued. To now hold that because of the duress of these circumstances petitioners have forfeited their right to a final determination on the important constitutional questions involved clearly would not be consistent with the elementary principles of justice.



III.

**This Case Does Not Fall Within the Class of Cases in  
Which This Court Has Refused to Accept  
Jurisdiction.**

While it is true that this Court has historically been reluctant to consider causes which are moot, it does not follow that under the circumstances of this case the cause has become moot or that exceptions to the general rule are not applicable.

For example, this Court has held that expiration of individual contracts with employees which an order of the National Labor Relations Board required the employer to terminate does not render a case moot in view of the continuing obligation imposed by the order of the National Labor Relations Board. **J. I. Case Company v. N. L. R. B.**, 321 U. S. 332, 334. Similarly, neither the discontinuance of practices alleged to be in violation of regulatory legislation nor an amendment of such legislation renders a case moot. **Federal Trade Commission v. Goodyear Tire & Rubber Company**, 304 U. S. 257.

It has also been held that the passage of a new inheritance tax law relieving the petitioners in error of the burden of a judgment does not render the cause moot because of the "general and continuing nature of the legislation." **Campbell v. California**, 200 U. S. 87, 92.

And where there is a matter of great public interest involved, the cause does not become moot because of settlement of the immediate controversy which gives rise to the litigation. **United States v. Trans-Missouri Freight Association**, 166 U. S. 290, 308. In the latter case this Court stated:

"Private parties may settle their controversy at any time \* \* \*. Here, however, there has been no ex-

tinguishment of the rights (whatever they are) of the public, the enforcement of which the Government has endeavored to procure by a judgment of the court under the provisions of the Act of Congress just cited.”

Subsequently, in the case of **Southern Pacific Terminal Company v. Interstate Commerce Commission**, 219 U. S. 498, 514, this rule was reiterated, the court pointing out that in the enforcement of regulatory statutes the questions involved were usually continuing ones and that short term orders under such statutes cannot be the means of defeating the jurisdiction of this court or of evading review. The court pointed out that cases of this type involved the public interest and it did not make any difference whether review was sought by the Government or by the party affected by the order.

In the last cited case this Court quoted with approval from the case of **Boise City Irrigation and Land Company v. Clark**, 131 Fed. 445 (C. A. 9th), in which case it was stated that courts would not hold controversies involving orders of public bodies moot when there was a “necessity or propriety of deciding some question of law presented which might serve to guide the municipal body when again called upon to act in the matter.”

In the case of **Southern Pacific Company v. Interstate Commerce Commission**, 219 U. S. 433, 452, this court held that even though a rate order had spent its force because of the passage of time it would nevertheless review such order because of the influence and effect which the rates under the expired order might have on the fixing of future rates. Similarly, in the instant case, the establishment of rates of pay and the working conditions by the order of the state can very well effect and control future negotiations between the parties since it is common practice for negotiators and arbitrators to work forward from prior

arbitration awards in determining the justice of demands made in current bargaining or arbitration processes.

As has been suggested in respondents' brief, and in the petitions filed in the instant case and its companion case No. 329, the provisions of the law relating to compulsory arbitration and to prohibition of strikes are inter-related and should be considered together. The permanent injunction which has been entered is a continuing one, and the validity of that injunction must be determined. The related question, therefore, should be determined at the same time.

It must be remembered that no challenge has been made in the instant proceedings to the merits of the award, but that the challenge throughout has been to the statute under which the award was made. The law under which the award was made does not expire. It continues as a constant threat in future negotiations, and remains an obstacle to the process of good faith collective bargaining envisioned by the National Labor Relations Act.

Finally, the instant petitions present questions of great public interest. They involve not only the principle of the Wisconsin law as applied in a concrete situation, but also the principle of the laws of some eleven other states. The case deals not only with important constitutional questions, but with matters which are currently of great significance to municipalities, states and the federal Government. Likewise, determination by this court at the present time of the difficult constitutional questions involved is of critical importance to large bodies of wage earners who are employed in the field of transportation and by public utilities generally. In the cases above cited this court has held that where such question of public policy was involved it would accept jurisdiction and adjudicate the case.

**Conclusion.**

It is respectfully submitted that the issues involved have not become moot; that they are ripe for determination at the present time; that they could never be determined finally by this court except under the procedure adopted herein; and that the cause involves a question of publici juris which, in the interest of all the citizens of this country, should be finally determined.

Respectfully submitted,

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